



Docket No. ORT1436US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Smith-Swintosky, et al.

Serial No. : 09/863,600

Art Unit: 1653

Filed : May 23, 2001

Examiner: A. Mohamed

For : **NEROPROTECTIVE PEPTIDES**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

May 31, 2006
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Yunling Ren
(Name of applicant, assignee, or Registered Representative)

/Yunling Ren/
(Signature)

May 31, 2006
(Date of Signature)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pursuant to 37 C.F.R. §§ 1.56, 1.97 and 1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. 1.56(b).

In accordance with § 1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified application, within three-months of the date of a first Office Action on the merits of the above-identified application, or before the

<i>Application Number</i>	09/863,600
<i>Filing Date</i>	May 23, 2001
<i>First Named Inventor</i>	Smith-Swintosky,
<i>Group Art Unit</i>	1653
<i>Examiner Name</i>	A.Mohamed
<i>Attorney Docket Number</i>	ORT1436US

mailing date of a first Office Action after the filing of request for continued examination under § 1.114, no additional fee is required.

Applicants direct the Examiner's attention to the litigation between an assignee of the present application, Ortho-McNeil Pharmaceutical, Inc., and Affymax, Inc., case no. 04CV6216 in the United States District Court for the Northern District of Illinois, Eastern Division. This litigation is currently pending.

In the Complaint as originally filed on September 23, 2004, Affymax alleges incorrect inventorship and ownership over the claims in a number of patents and patent applications including the present application Serial Number 09/863,600 ('600 application). However, in its Amended Complaint filed on October 12, 2005, Affymax has dropped all of the allegations of incorrect inventorship and ownership with respect to any claim in the '600 application. As presently understood by applicants, the inventorship of the '600 application is no longer in dispute. It is applicants' good faith belief that Affymax did not contribute to the inventions claimed in the '600 application or any related domestic or foreign patents or applications.

In its Amended Complaint, Affymax only alleges incorrect inventorship and ownership over applicants' U.S. Pat. No. 5,767,078 ('078 patent) and patents or applications related

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thereto. It should be noted that the present application ('600 application") is not related to the '078 patent.

Affymax has also filed a Complaint in Germany (Affymax, Inc. v. Ortho Pharm. Corp., No. 21 O 10914/04, Munich Reg. Ct. I, June 9, 2004), alleging incorrect inventorship and ownership over a patent application having Publication Number EP 0892812, which is a counterpart to the '078 patent. The German Complaint does not include any allegation of incorrect inventorship over any counterpart of the '600 application.

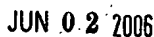
Copies of all reference cited on the attached Form PTO 1449 and MPEP 609D are enclosed herewith.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/ORT1436US/YR. This form is submitted in triplicate.

Respectfully submitted,

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Sheet 1 of 1

Application Number	09/863,600
Filing Date	May 23,2001
First Named Inventor	Smith-Swintosky
Group Art Unit	9298
Examiner Name	A. Mohamed
Attorney Docket Number	ORT 1436 US

U.S. PATENT DOCUMENTS

[illegible]

FOREIGN PATENT DOCUMENTS

[illegible]

Examiner Signature	Date Considered
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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